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Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

Lindsey K. Springer

Petitioner,

v.

Internal Revenue Service, ex rel. United States of America

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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WRIT OF CERTIORARI

Lindsey K. Springer, *pro-se*
5147 S. Harvard, # 116
Tulsa, Oklahoma 74135
918-748-5539

QUESTIONS PRESENTED

1. Whether the United States Tax Court had "exclusive jurisdiction" over each issue raised by Petitioner in his appeal for judicial review of two separate determinations issued by the Internal Revenue Service pursuant to 26 U.S.C. § 6330(c)&(d), where one determination directed Petitioner to the United States District Court and the other directed Petitioner to the United States Tax Court?

2. Is a Tax Court decision that had not become final by the enactment of the Internal Revenue Restructuring and Reform Act of 1998, regarding (1) Bureau of Labor Statistics taxes, (2) penalties,(3) interest as a penalty, (4) and additional penalties claimed to be derived from that decision, precluded from being an issue raised in a Collection Due Process Hearing under section 6330 in part derived from that Tax Court decision?

(questions continued)

3. Does the Panel's imposition of restrictions violate 28 U.S.C. § 46 and is such justified in imposing filing restrictions against Petitioner for appealing the Internal Revenue Service's abuse in refusing to comply with 26 U.S.C. § 6330(a),(b),(c), (d) and (e) as well as 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512?

PARTIES TO THE PROCEEDING

The caption does not contains the names of all parties in the case below.

The Agents acting in their official capacity are Fred Rice, Scott Penny and Leland Neubauer.

TABLE OF CONTENTS

OPINIONS BELOW.....1

STATEMENT OF JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS.2

STATEMENT OF THE CASE.....2

REASONS FOR GRANTING WRIT TO CIRCUIT.....13

1. The United States Tax Court did not have "exclusive jurisdiction" over appeals for judicial review of two separate determinations issued by the Internal Revenue Service pursuant to 26 U.S.C. § 6330(c)&(d) involving claims derived from statistical information pursuant to 26 U.S.C. § 7491(b) and where a majority of the levy claim was derived from interest and penalty subject to 26 U.S.C. § 7491(c) and 44 U.S.C. § 3512, wherein one determination directed Petitioner to the United States District Court involving penalties and the other directed Petitioner to the United States Tax Court.....13

2. The panel decision conflicts with 26 U.S.C. §§§§§ §§ 6201, 6211, 6212, 6213, 6214, 6503, and 7481, in its issue preclusion or res

judicata premise because the Order of the Tax Court dated February 10, 1997, to which cert was denied by the Supreme Court on June 8, 1998, is subject to the Restructuring and Reform Act of 1998 because said order had not yet become final at the time § 6330 and 7491 were enacted into law and codified. The Panel decision conflicts with *Commissioner v. Sunnen*, 333 U.S. 591, 599 (1948).....21

3. The Panel's imposition of restrictions violates 28 U.S.C. § 46 and is not justified in imposing filing restrictions against Petitioner for appealing the Internal Revenue Service's abuse in refusing to comply with 26 U.S.C. § 6330(a),(b),(c), (d) and (e) as well as 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512.....31

CONCLUSION.....33

APPENDIX

Decision in Springer I.....App.1

Decision in Springer II.....App.16

Panel Decision App.22

Order on Filing Restrictions App.59

Order deny Petition for Rehear and Rehear En Banc..... ....App.61

TABLE OF AUTHORITIES page #

Cary v. Curtis, 3 How. 236, 245 (1845).....17

CIR v. Gooch Milg. & Elev., 320 U.S. 418(1943)

.....13,18,20,22

CIR v. McCoy, 484 U.S. 3 (1987).....19,22,31,33

CIR v. Sunnen, 333 U.S. 591, 599 (1948).....21,29

Frank. Sav. Corp. v. U.S., 180 F.3d 1124, 1130

(10th Cir.1999).....17

Fent v. Oklah. Water, 235 F.3d 553, 558 (10th

2000)..... ...17

Garvey v. Freeman, 397 F.2d 600, 605 (10th Cir.

1968).....27

Insur. Corp. of Ireland v. Compagnie des

Bauxites de Guinee, 456 U.S. 694, 701 (1982)....17

Kawaauhau v. Geiger, 523 U.S. 57, 62 (1998)....19

Mercoid Corp. v. Mid-Cont. Co., 320 U.S. 661,

671.....30

Prier v Steed, 456 F.3d 1209, 1214 (10th Cir.

2006).....16

Stark v. Wickard, 321 U.S. 309, 310.....28

Saco River Cellular, Inc. v. FCC, 133 F.3d 25, 31

(D.C. Cir. 1998).....8

Southern Pacific R. Co. v. U.S., 168 U.S. 1, 48.....30

STATUTES INVOLVED

26 U.S.C. §

6201.....21,23,24,26

26 U.S.C. § 6211.....21,24

26 U.S.C. § 6212.....21,24

26 U.S.C. § 6213.....21,24

26 U.S.C. § 6214.....21,24

26 U.S.C. § 6330(c)(4).....18,26

26 U.S.C. § 6330(d)(1).....13,14,17,20,33

26 U.S.C. § 6330(e).....7,15

26 U.S.C. § 7481.....21,25

26 U.S.C. § 7482.....20

26 U.S.C. § 7491(b).....14

26 U.S.C. § 7491(c).....14

26 U.S.C. §7421.....10,33

28 U.S.C. § 46.....2,31,32

44 U.S.C. § 3506(c)(1)(b).....32,33

44 U.S.C. § 3507.....32,33

44 U.S.C. § 3512.....2,9,14,18,32,33

PETITION FOR WRIT OF CERTIORARI

Petitioner Lindsey K. Springer respectfully requests that a Writ of Certiorari be issued to the United States Court of Appeals for the Tenth Circuit in Springer II and to reverse the decision by the United States District Courts for the Western and of Oklahoma.

OPINIONS BELOW

The decision of the United States District Court for the Western District of Oklahoma ("Springer II") was entered August 7, 2006. The Panel decision was entered May 1, 2007.

The Panel decision imposing filing restrictions was entered May 23, 2007. The Order denying rehearing was issued July 3, 2007. The Order denying rehearing was issued July 3, 2007.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was final July 3, 2007.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTION AND STATUTES

At issue is the First Amendment right to redress grievances against the administrative process of the Internal Revenue Service, as a government agency, both as to the propriety of its abuse, purportedly activating the Internal Revenue Restructuring and Reform Act of 1998, as well as its failure to bring its requests for income information into compliance with the Paperwork Reduction Act of1980 and 1995. The Collection Due Process provision, 26 U.S.C. § 6330 and the Public Protection Provision, 44 U.S.C. § 3512 are at issue in this case. Both the Panel concluded were not enacted to provide Petitioner with any due process or protection.

Finally, whether the filing restrictions are abusive and whether the restrictions are contrary to 28 U.S.C. § 46.

STATEMENT OF THE CASE

On February 10, 1997, the United States Tax Court in Springer v. CIR, No. 260545-96 issued an

order dismissing Petitioner's Petition in regard to a Petition objecting to Notice of Deficiencies for Six Calender Years wherein the IRS made their income tax claims based of the Bureau of Labor Statistics for willful failure to provide income tax information to the IRS on Form 1040 from 1990 through 1995, as well as claimed liability on a false 1099 regarding the non qualifying assumption of a home mortgage to which the amount of the assumed mortgage was the basis of the 1099 transaction.[1]

Petitioner appealed the decision of the United States Tax Court to the United States Court of Appeals for the Tenth Circuit for the Tax Court refusing to address Petitioner's claims because, as the Tax Court said, to do so would tend to give merit to Petitioner's claims

On October 10, 1997, a Panel of Justices at the United States Court of Appeals for the Tenth

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[1]The Government does not dispute either of these claims.

Circuit dismissed Petitioner's appeal of the Tax Court decision claiming that until Petitioner paid a sanction to the Tenth Circuit Clerk's Office of $ 2,000 ordered from a prior case, Petitioner could not proceed with his Tax Court appeal.[2]

Because Petitioner was forced to Petition the Tax Court based upon the Notice of Deficiencies issued to him by the IRS, Petitioner appealed to the Supreme Court the Tenth Circuit's decision not to consider Petitioner's appeal.

On June 8, 1998, the Supreme Court denied Certiorari in *Springer v. CIR*, 524 U.S. 920 (1998).

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[2]The Department of Justice attempted to have the appeals at issue herein disregarded for the same reason as the Tenth Circuit used in *Springer v. CIR*, 524 U.S. 920 (1998) claiming that the DOJ had not received the $ 2000. The actual sanction was directed to be paid to the Clerk's Office of the Tenth Circuit however, even after being made aware this sanction was paid in 1997, the DOJ continued to advance a theory in these appeals that the sanction was not paid because that sanction was to be paid to the DOJ and not as the Tenth Circuit had directed.

On July 22, 1998, Congress enacted the Internal Revenue Restructuring and Reform Act of 1998 ("RRA 1998)", which created 26 U.S.C. § 6330 named "Collection Due Process Hearing" and 26 U.S.C. § 7491 which "in any Court proceeding" the "Burden of Proof" was shifted to the Secretary in three certain circumstances. The three instances were when the Taxpayer comes forth with credible evidence regarding income tax liability, and in two situations where items of income were reconstructed using statistical information and where penalties and interest are claimed. In these three instances the burden is placed by Congress on the Secretary and not on the Taxpayer in any Court proceeding. This was a change from the law prior to passage of RRA 1998.

On or about March 6, 2005, Revenue Officer Fred Rice taped a business card to Petitioner's front door. Petitioner called Officer Rice and was told Rice had issued a Levy and Collection Due

Process ("CDP") Hearing notice to Petitioner's last known address. This address was 15 years old and not the address used by the IRS in their 6700 investigation concluding less than 60 days earlier.[3] It was also not the address in 1996 the IRS used to issue their Notice of Deficiencies to Petitioner for calender years 1990 through 1995.[4]

Officer Rice quickly mailed to Petitioner a copy of what he had mailed to the intentional wrong address which notified Petitioner of Rice's claims Petitioner's Bureau of Labor Statistics

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[3]This was the first attempt by the IRS at trying to dissolve Petitioner's Rights to a CDP hearing by hoping Petitioner would not respond to a business card since a business card is not notifying Petitioner of anything according to the law. So, the actual Levy and CDP notice was mailed to a 15 year old address and a business card stuck to the front door of Petitioner.

[4]The address of the Notice of Deficiencies and the address used in all IRS litigation between Petitioner and the IRS for the last 15 years remained the same address and remains the same address to this date. Also, the same address this Court used in *Springer v. CIR*, 524 U.S. 920 (1998).

liability had grown from $ 100,000.00 to over $ 300,000.00 with the addition of penalties and interest. This Levy Notice and Right to CDP Hearing Notice was immediately acted upon by Petitioner. App.17

Petitioner's request for a CDP Hearing pursuant to 26 U.S.C. § 6330 was timely. Prior to the scheduled hearing, Officer Scott Penny contacted Petitioner regarding what he would and would not address with respect to Petitioner's issues raised in the Request for a CDP Hearing. At the moment Petitioner made the CDP request all collection action with regard to the Levy procedure was to be suspended pursuant to 26 U.S.C. § 6330(e).

Officer Penny informed Petitioner that Petitioner would not be allowed a "hearing" but would be allowed a telephone call with Officer Penny but that phone call could not be recorded. Penny also informed Petitioner that he would not verify that all laws and procedures

were complied with in issuance of the Levy notice. He also informed Petitioner that he would not be addressing the Paperwork Reduction Act claims advanced by Petitioner and that the administrative forum was not the proper place to address those claims. Penny said he would not be addressing the issues raised regarding either sections 7491(a), (b) or (c).[5]

A day before the scheduled telephone call[6] between Penny and Petitioner, Petitioner commenced Springer I in the United States District Court for the Western District of Oklahoma because that is where Penny was located. It is also where Officer Rice was located. In this injunctive action, Petitioner sought the District Court to direct Penny and anyone with whom he

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[5]It is worth noting that the Government told the District Court that the administrative hearing was not a "court proceeding" under section 7491(a), (b) or (c).

[6]You cannot even classify the call as an interview.

acted in the "Agency" to comply specifically with 26 U.S.C. §§ 6330, 7491 and 44 U.S.C. § 3512.

Officer Penny issued Two Notice of Determinations under 26 U.S.C. § 6330 on August 16, 2005, while Springer I was pending. One directed Petitioner to Tax Court and the other directed Petitioner to the United States District Court. App.37 On September 7, 2005, Petitioner sought a temporary injunction in Springer I based upon content of the Notices and lack of regard for 26 U.S.C. §§ 6330, 7491 and 44 U.S.C. § 3512.

On September 15, 2005, Petitioner, within 30 days, filed Springer II in the Western District of Oklahoma under 26 U.S.C. § 6330(d) as the District Court had not acted on the TRO requests in Springer I within the 30 days.

On September 16, 2005, Petitioner was awakened to 13 armed Agents of the Internal Revenue displaying a Court Ordered Search Warrant involving a purported criminal

investigation for willful failure to timely provide information to the IRS on their request for that information.

On October 6, 2005, the District Court dismissed Springer I holding that the Anti Injunction forbid Petitioner's action and that no evidence that a levy action had began to warrant the exception under 26 U.S.C. § 7421(a). The District Court also held that Petitioner should bring his injunctive action in the United States Tax Court. App.11-12 Petitioner timely appealed this decision to the United Stats Court of Appeals for the Tenth Circuit, case no. 05-6387 (Springer I)

On January 3, 2006, request Form 1040 for 2005 was released to the public by the IRS. This request contained the same OMB # 1545-0074 as each previous request had displayed. At this same time, IRS made request through several other Forms, like Form 2555, W-2, 1040 NR, and over 20 others, which all illegally displayed the request Form 1040 OMB # 1545-0074.

On February 17, 2006, because the IRS was using OMB # 1545-0074 like a drunken sailor, Petitioner filed Springer III in the Northern District of Oklahoma, seeking preliminary and permanent injunctive relief against the IRS regarding the subjecting of Petitioner to any civil or criminal penalties for any alleged failure to provide answers to any questions to the IRS on its bootleg and outlaw request Form 1040 because said request did not comply with either the 1980 or 1995 PRA.

On June 22, 2006, Chief United States District Court Judge Claire V. Eagan dismissed Springer III on the Government's motion to dismiss citing that the mandating statute theory precluded the Paperwork Reduction Act from protecting Petitioner from being subject to "penalty" for the purported willful failure to provide answers to the IRS requests for information on request Form 1040. Petitioner timely appealed this decision to the U.S. Court of Appeals for the Tenth Circuit.

On August 7, 2006, the Western District of Oklahoma dismissed Springer II, citing to its decision in Springer I as being res judicata.[7] App. 19 Petitioner timely appealed this decision to the United States Court of Appeals for the Tenth Circuit.

Three separate briefs were filed by Petitioner in the Tenth Circuit and on May 1, 2007, without any notice to Petitioner, someone at the Tenth Circuit consolidated all three cases into one single Order. Thus where Springer I, II and III began their existence. App. 32

The Panel dismissed Springer I and II based upon the Anti Injunction Act prohibits those actions and Springer II on the theory it belonged in Tax Court. The Panel dismissed Springer III on the grounds Petitioner had no right to sue for

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[7] In a footnote like this one the District Court stated that it was also dismissing for the same reasons argued by the Government in its Motion to Dismiss.

violation of the Paperwork Reduction Act violations.

Petitioner filed objections to the filing restrictions part of the order as directed by the Panel and on May 23, 2007, the Panel upheld its restrictions suggested in its May 1, 2007 Order

Petitioner filed Petition for Rehearing and Rehearing En Banc as to each of the three Springer cases and on July 3, 2007, the Panel elected not to rehear nor vote for rehearing en banc in each of the three cases.

This Petition is timely.

ARGUMENT SUPPORTING GRANTING OF WRIT

1. **The Panel in Springer II conflicts with the direct words, language and meaning of what Congress wrote in 1998, codified in 26 U.S.C.§ 6330(d)(1) although that has changed now, as well as this Court's holding in *Commissioner v. Gooch Milling & Elevator*, 320 U.S. 418 (1943) which is that Tax Court lacks equitable powers and is a Court of limited jurisdiction.**

Question:

Whether the United States Tax Court had "exclusive jurisdiction" over each issue raised by Petitioner in his appeal for judicial review of two separate determinations issued by the Internal Revenue Service pursuant to 26 U.S.C. § 6330(c)&(d), one determination directed Petitioner to the United States District Court involving penalties and the other directed Petitioner to the United States Tax Court involving claims derived from statistical information pursuant to 26 U.S.C. § 7491(b) and where a majority of the levy claim was a new demand and derived from interest and penalty subject to 26 U.S.C. § 7491(c) and 44 U.S.C. § 3512?

Section 6330(d)(1) reads "Procedure after hearing" and "Judicial review of determination":

> "the person may, within 30 days of a determination under this section, appeal such determination-
> (A) to the Tax Court, or
> (B) if the Tax Court does not have jurisdiction of the underlying tax liability, to the district court of the United States."

Section 6330(e) says Tax Court only has jurisdiction if a Notice of Determination has issued. This means there is no way Springer I could have ever been commenced in the Tax Court as the District Court held in its order to which the Panel upheld. Springer II was dismissed based upon this decision in Springer I being res judicata. This only leaves Springer I to be brought in the appropriate United States District Court. Springer II was only made more confusing by the IRS.

Petitioner received a single Levy Notice and requested a Collection Due Process Hearing. With no hearing, no verification, and no due process, on August 16, 2005, the IRS issued Two Notice of Determinations stemming from that single Levy claim. App. 18 and 36 The Panel said it was frivolous for Petitioner to Petition the United States District Court as one of the Two Notice of Determinations directed Petitioner to do. The Panel addressed this issue by saying "Springer's

argument that one of the notices of determination directed him to appeal to a United States District Court does not defeat the fact that the district court lacked jurisdiction. Parties cannot confer subject matter jurisdiction on a federal court by their actions. *Prier v Steed*, 456 F.3d 1209, 1214 (10th Cir. 2006)."[8] App. 38

Parties may not but the IRS certainly can. This decision flies in the face of the jurisprudence stemming from a party's requirement to obtain a waiver of Sovereign Immunity from the party known as the United States. See 26 U.S.C. § 7433 and 26 CFR 301.7433 requirement of treasury claim and response or no response with 180 days either one is interpreted as waiver of sovereign immunity. The Tenth Circuit "has on many occasions recognized that where 'the United

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[8]Petitioner was not penalize by the Panel for Springer II but did find that the appeal was frivolous and warranted more penalties but the Government did not ask for them.

States retains its sovereign immunity, . . . the district court lacks subject matter jurisdiction to hear the suit.' *Franklin Sav. Corp. v. United States*, 180 F.3d 1124, 1130 (10th Cir.), cert. denied, 120 S.Ct. 398 (1999) (quotation omitted);" *Fent v. Oklahoma Water*, 235 F.3d 553, 558 (10th Cir. 2000)

The Supreme Court held *Cary v. Curtis*, 3 How. 236, 245 (1845) that it is a settled proposition that the subject-matter jurisdiction of the lower federal courts is determined by Congress 'in the exact degrees and character which to Congress may seem proper for the public good; see *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982) (jurisdiction of lower federal courts is 'limited to those subjects encompassed within the statutory grant of jurisdiction)

Congress said in section 6330(d)(1) that it intended certain issued to be decided on appeal in the United States District Court. See specific

issues precluded at 6330(c)(4).[9] What Congress did not intend was the IRS would try to split up jurisdiction like they did in Springer II. If the "Tax Court is a court of limited jurisdiction and lacks general equitable powers," *Commissioner v. Gooch Milling & Elevator*, 320 U.S. 418 (1943), then what determined Tax Court's jurisdiction over the subject matter in an appeal taken from two erroneous Notice of Determinations?

Congress intended relief and all Petitioner has received is grief. Congress intended protection from penalty under section 3512 and all Petitioner received is penalty after penalty after penalty. Congress intended the burden of proof in any court proceeding was upon the Secretary and that verification was to be made

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[9]None of Petitioner's issues raised in his Petition are precluded issues. During the not allowed to be taped phone conversation doubling as a fake hearing, Petitioner directed the Officer to the phrase in general and this term means not always to which he replied "not in your case."

at the hearing Petitioner was never given, and yet the IRS has been made to produce nothing, had no burden to do anything, save the attempt to out procedure Petitioner, and the person signing the Notices of Determination did not attend the Hearing.

Interpretation, however, must give full effect to the entire statute, not merely a foot note. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) ("[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." (citing *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 837 (1988)))

Yet the Panel says the IRS cannot confer jurisdiction over a certain subject matter to the Federal Courts. What then does a Notice of Determination accomplish?

In *Commissioner v. McCoy*, 484 U.S. 3 (1987) the Supreme Court held that United States Tax Court cannot grant relief regarding interest and

penalties that could not be ascertainable until after an assessment. In explaining the jurisdiction of an Appellate Court under 26 U.S.C. § 7482, the Supreme Court said:

> Its only jurisdiction, under § 7482(a), was to review the decisio[n] of the Tax Court.... It was not empowered to proceed further to decide other questions relating to interest and penalty - questions that were not presented, and could not possibly have been presented, to the Tax Court - or to grant relief that the Tax Court itself had no jurisdiction to provide." Id. at 7

This Court should Grant Certiorari to the United States Court of Appeals for the Tenth Circuit to unequivocally express how the plain reading of section 6330(d)(1) is as the IRS and Petitioner read it as well as now that this section was amended by removing the district court from the list of options, address how the United States Tax Court become a sole Court of Equity as this Court in *Commissioner v. Gooch Milling &*

Elevator, 320 U.S. 418 (1943) said it was a Court of limited jurisdiction under Article I..

2. **The panel decision conflicts with 26 U.S.C. §§§§§§§ 6201, 6211, 6212, 6213, 6214, 6503, and 7481, in its issue preclusion or res judicata premise because the Order of the Tax Court dated February 10, 1997, to which cert was denied by the Supreme Court on June 8, 1998, is subject to the Restructuring and Reform Act of 1998 because said order had not yet become final at the time § 6330 and 7491 were enacted into law and codified.**
The Panel decision conflicts with *Commissioner v. Sunnen*, 333 U.S. 591, 599 (1948)

Question:

Is a Tax Court decision that had not become final by the enactment of the Internal Revenue Restructuring and Reform Act of 1998, regarding (1) Bureau of Labor Statistics taxes, (2) penalties,(3) interest as a penalty, (4) and additional penalties claimed to be derived from that decision, precluded from being an issue raised in a CDP Hearing under section 6330 in part derived from that Tax Court decision?

The Panel determined Springer II, like Springer I, was a "jurisdictionally defective challenge to the CDP hearing and was "frivolous" App.38 (fn. 6) In footnote 5, the Panel noted that "res judicata" would "bar" Springer I and II based upon the "fact of his liability for income taxes, interest and penalties for 1990 -1995." App.38

Petitioner directed the Panel in his brief and in every other pleading filed to this Courts ruling in *CIR v. McCoy*, 484 U.S. 3, 7 (1987) where it said "Interest on a tax deficiency is separately mandated by 26 U.S.C. § 6601(a). A penalty that accrues under § 6651(a)(3) is also separate and outside the scope of the petition to the Tax Court. The deficiency asserted here was not assessed, and could not have been assessed, until after the Tax Court had rendered its decision. See § 6213(a). The Tax Court is a court of limited jurisdiction and lacks general equitable powers." *CIR v. Gooch*

Milling & Elevator, 320 U.S. 418 (1943).[10]

Section 7491 was enacted during the time Petitioner's case had not yet become final. The Paperwork Reduction Act of 1995 was not even acknowledged by the IRS until January of 1997.

Yet, the Panel said because of "res judicata" that even the interest and penalties, which were never a part of the Tax Court decision, were not subject to challenge. In Springer III, the Panel agreed the Protection could be raised at any time and yet never mention how or why that holding does not apply to Springer I or II.

The "adjudication in the earlier proceeding" also attempts to improperly rely upon "res judicata" or "issue preclusion" to evade the obvious. 26 U.S.C.§ 6201(a) provides the "Authority of Secretary" to "make...assessments..."

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[10]And crucial to this analysis is the undisputed fact Petitioner has never received any Notice of any Assessment or any document purporting to be an assessment under section 6201.

Section 6201(e) applies "special rules applicable to deficiencies of income, estate, gift, and certain excise taxes" directing "subchapter B" to these special rules.

Subchapter "B" is entitled "Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes. In subchapter B appears sections 6211, 6212, 6213 and 6214. Section 6211 defines the term "deficiency." Section 6212 describes the meaning of "Notice of Deficiency." Section 6213 provides a "Restriction applicable to deficiencies; petition to Tax Court" and states that:

> "Except as otherwise provided in § 6851, 6852, or 6861 no assessment of a deficiency in respect of any tax imposed by subtitle A or B, chapter 41, 42, 43 or 44 and **no levy or proceeding in court for its collection shall be made, begun, or prosecuted until** after such notice has been mailed to the tax-payer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the

of the **Tax Court has become final."**

26 U.S.C. § 6214 is entitled "Determination by Tax Court" and says the Tax Court shall have jurisdiction to "redetermine the correct amount of the deficiency...and to determine whether any additional amount, or any addition to the tax should be assessed, if claim therefor is asserted by the Secretary at or before the hearing or a rehearing." Under 6214(d) entitled "Final Decision of Tax Court" such is to be "determined according to the provision of § 7481." Section 7481 is entitled "Date when Tax Court becomes final" and describes under subsection (a)(2)(B) the decision of the Tax Court becomes final upon "the denial of a petition for certiorari..."

Section 6503 says during a "Notice of Deficiency" the "running of the period of limitations shall be suspended for the period during which the Secretary is prohibited from making the assessment or from collecting by levy or a proceeding in court" until "60 days" after the

Tax Court decision becomes "final." No "assessment" can or could be made by the Secretary under § 6201 until after the Tax Court decision has become final.

The decision by the Tax Court did not become final until September 6, 1998. See *Springer v. CIR*, cert denied, 524 U.S. 920 (1998) June 8, 1998.. Under § 6213 an assessment cannot issue until 90 days thereafter and under 6503(a)(1) 60 days thereafter. This makes September 6, 1998 the first date in which the Secretary may have issued any "assessment" pursuant to its authority under § 6201. No assessment was ever issued and that fact is not in dispute.

Under § 6330(c)(4) Congress provided the ONLY precluded issues during the CDP Hearing by explaining:

> "An issue may not be raised at the hearing if (A) the issue was raised and considered at a previous hearing under § 6320 or in any other proceeding administrative or judicial proceeding; and (B) the person

seeking to raise the issue participated meaningfully in such hearing or proceeding.

The Panel's reliance on res judicata ignores the time table of this case and that the RRA 1998 applied to the decision by the Tax Court if and when the IRS selected to pursue in Court for its collection any amount at issue in that decision. The Panel decision is silent that Appellant did not raise the PRA issue because the Secretary was not complying with the Paperwork Reduction Act and its required compliance requirements, as well as § 7491 was not enacted prior to the original hearing.

"No legislative language can deprive a man of a fair hearing in the adjudication of his rights, or of his right to have a court decide whether the administrative agency acted within its jurisdiction; and, whether the agency through a lay tribunal applied the correct rule of law to the facts." *Garvey v. Freeman*, 397 F.2d 600, 605 (10th Cir.

1968); quoting *Stark v. Wickard*, 321 U.S. 309, 310.

To this the Panel says Petitioner had his hearing in Tax Court, "lost," and so long as the "CDP hearing comported with applicable law" the IRS is authorized "to impose the levy."[11] App.36 Congress decided Appellant had a right to a hearing, to an unbiased officer, to verification that "any applicable laws and administrative procedures have been met" and this was because Congress directed only the tax, penalty and interest actually owed was to be paid. The Notice of Determinations were not even signed by the purported hearing officer.

In *Saco River Cellular, Inc. v. FCC*, 133 F.3d 25, 31 (D.C. Cir. 1998), it was explained that, by explicitly allowing parties to **raise a Paperwork Reduction Act claim** at any time during ongoing

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[11]Petitioner does not take exception to the "comported with applicable law" as that is what Springer I and II have been attempting to have enforced.

proceedings, the Paperwork Reduction Act "prevents an agency or court from refusing to consider a [Paperwork Reduction Act] argument on the ground that it is untimely." Section 7491 also uses the phrase "in any Court proceeding" with no limitations.

In *CIR v. Sunnen*, 333 U.S. 591, 597 (1948) this Court explained a party is allowed to litigate issues already litigated when "fraud or some other factor invalidating the judgment" is presented. See *Von Moschzisker*, "Res Judicata," 38 Yale L.J. 299; Restatement of the Law of Judgments, §§ 47, 48. If Tax Court can render decisions about penalties and interest prior to assessment then those claims would be subject to the public protection as any other penalty.

This Court also held that when a separate "action between the same parties is upon a different cause or demand, the principle of res judicata is applied much more narrowly. In this situation, the judgment in the prior action

operates as an estoppel, not as to matters which might have been litigated and determined, but "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Cromwell v. County of Sac*, supra, 353. And see *Russell v. Place*, 94 U.S. 606; *Southern Pacific R. Co. v. U.S.*, 168 U.S. 1, 48; *Mercoid Corp. v. Mid-Continent Co.*, 320 U.S. 661, 671.

"Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. But matters which were actually litigated and determined in the first proceeding cannot later be relitigated. Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel. In this sense, res judicata is usually and more accurately referred to as estoppel by

judgment, or collateral estoppel." See *Restatement of the Law of Judgments*, §§ 68, 69, 70; Scott, "Collateral Estoppel by Judgment," 56 Harv. L. Rev. 1.[12]

Petitioner never received the benefit of section 7491 to the IRS claims. Petitioner never raised the PRA of 1980 or 1995. The decision by Tax Court contains demands that the Levy Notice at issue in this case did not make. To which this Court in McCoy said could not be made until after the assessment has taken place. Again, no assessment was presented by the Government at any time to Petitioner and no party disputes that claim.

3. The Panel's imposition of restrictions violates 28 U.S.C. § 46 and is not justified in imposing filing restrictions against Petitioner for appealing the Internal Revenue Service's abuse in refusing to comply with 26 U.S.C. §

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[12]Again, in McCoy, this Court said issues related to interest and penalties were outside the scope of the Petition to Tax Court.

6330(a),(b),(c), (d) and (e) as well as 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512.
Question:

Does the Panel's imposition of restrictions violate 28 U.S.C. § 46 and is such justified in imposing filing restrictions against Petitioner for appealing the Internal Revenue Service's abuse in refusing to comply with 26 U.S.C. § 6330(a),(b),(c), (d) and (e) as well as 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512?

There is probably some in Government who thought the IRS was not doing anything wrong when Congress overhauled them in 1998.

28 U.S.C. § 46 requires that all appeals to the United States Court of Appeals for the Tenth Circuit be considered by Three Judges Two of which are from that Court.

The Panel decision violates 28 U.S.C. § 46 by imposing filing restrictions[13] against Petitioner for appealing the Internal Revenue Service's abuse in

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[13]44 U.S.C. Section 3502(14) defines penalty as a right, privilege, monetary or licence and says it applies to the Agency and Courts.

refusing to comply with 44 U.S.C. §§§ 3506(c)(1)(B), 3507 and 3512. App. 47,59

Springer II was dismissed on the premise that Springer I belonged in the United States Tax Court and that because the IRS had not taken any property from Petitioner the exception under section 7421(a) had not been activated.

Between the holding in *McCoy* and the plain reading of 26 U.S.C. § 6330(d)(1), there is simply no way appealing the United States District Court was in error or frivolous.

CONCLUSION

Petitioner, Lindsey K. Springer, requests this Court issue Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit on each issue raised herein and for the purpose of reversing the decision by the United States District Court for the Western District of Oklahoma.

Respectfully Submitted

9-30-07 /s/ Lindsey K. Springer

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER,

Plaintiff,

v. Case No. CIV-05-466-F

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER

Now before the Court is a Motion to Dismiss filed by Defendant, the United States of America (Defendant), as the real party in interest and in place of the named federal Defendants Fred Rice, Scott Penny, and Leland Neubauer. Plaintiff Lindsey K. Springer (Springer) filed a response to which Defendant filed a reply; accordingly, the motion is ripe for disposition. The Court, upon full consideration of the applicable law and the litigants' submissions, now **GRANTS** Defendant's Motion to Dismiss.

BACKGROUND

In 1996, the Internal Revenue Service (IRS) issued two notices of deficiency to Springer after determining that he failed to file federal income tax returns and pay estimated taxes for the years 1990 through 1995. (Def.'s Mem., Dkt. No. 14, at 3 ¶ 1; Pl.'s Compl., Dkt. No. 1, Exs. 1, 2.) Springer timely petitioned the United States Tax Court (Tax Court) for a redetermination of the claimed tax deficiencies; however, the Tax Court found Springer liable for the tax amounts stated within the notices of deficiency. (Def.'s Mem., at 4 ¶ 4, at 5 ¶ 6.)

In March 2005, the IRS sent Springer a "Final Notice" detailing both its intent to levy and Springer's right to a Collection Due Process Hearing (CDP hearing) with respect to his 1990-1995 federal income tax liabilities. (Id. at 5 ¶ 8.) Springer requested a CDP hearing. (Id. at 6 ¶ 9.) Prior to the hearing, the IRS notified Springer that he was only entitled to a CDP hearing conducted via the telephone and that he was precluded

from raising the issue of his liability for the taxes in question. (Id. at 7 ¶¶ 14-17.) Springer filed the instant action for injunctive relief in federal court on April 25, 2005, the day before his scheduled CDP hearing. (Id. ¶ 17; Pl.'s Compl., date stamp at 1.) The IRS conducted the telephone CDP hearing and, on August 16, 2005, issued final notices of determination outlining the matters considered at the CDP hearing and sustaining the decision to levy. (Def.'s Br., Dkt. No. 27, at 7 ¶¶ 17- 19.) Defendant now moves the Court to dismiss Springer's complaint under FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

STANDARD OF REVIEW

A Rule 12(b)(1) motion may take either of two forms: a facial attack questioning the sufficiency of the complaint, or a factual attack questioning the existence of subject matter jurisdiction itself. Holt v. United States, 46 F.3d

1000, 1002-03 (10th Cir. 1995). Here, Defendant mounts both a facial and a factual attack on Springer's complaint. The Court finds Defendant's factual attack to be both persuasive and dispositive. Consequently, there is no need to address Defendant's facial attack argument or its Rule 12(b)(6) argument (or Springer's responses to those arguments).

For a factual attack on subject matter jurisdiction, the Court may not presume the truthfulness of the complaint's allegations. Id. at 1003. Moreover, the Court has wide discretion to consider materials outside the complaint when resolving the jurisdictional question under Rule 12(b)(1); resort to outside materials does not convert the motion to dismiss to a Rule 56 motion for summary judgment. Id. Because the jurisdictional question and the merits of Springer's action are not intertwined, that is, neither issue is dependent on the same statute, the Court need not convert Defendant's Rule 12(b)(1) motion into

either a Rule (12)(b)(6) or a Rule 56 summary judgment motion. Id.

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. 506, 514 (1868).

DISCUSSION

The dispositive issue in the instant action concerns the existence of the Court's subject matter jurisdiction[1] to address the merits of

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[1]Even though the litigants discuss the waiver of sovereign immunity extensively, it is not the dispositive issue as 26 U.S.C. § 6330(d)(1) acts as a limited waiver. Render v. I.R.S., 309 F.Supp.2d 938, 940-41 (E.D. Mich. 2004) (collecting cases). (See Def.'s Mot., at 11.)

Springer's complaint. Defendant argues that the Anti-Injunction Act (AIA), 26 U.S.C. § 7421, strips the Court of subject matter jurisdiction and that exclusive jurisdiction lies with the Tax Court to adjudicate the underlying income tax dispute. Springer responds that his action falls within two exceptions to the AIA, thus the Court has subject matter jurisdiction to grant his requests for injunctive relief. Springer's arguments are unpersuasive.

I. The AIA and its Prohibition of Suits to Restrain Tax-related Activities.

In general, the Court has "original jurisdiction [over] any civil action arising under any Act of Congress providing for internal revenue." 28 U.S.C. § 1340;[2] Guthrie v. Sawyer, 970

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[2] Springer fails to list 28 U.S.C. Section 1340 as a basis for the Court's jurisdiction in his Complaint. Nevertheless, the Court focuses on Defendant's

F.2d 733, 735 n.2 (10th Cir. 1992). Under the AIA however, "[e]xcept as provided in section[] . . . 6330(e)(1), . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). The AIA effectively strips the Court of jurisdiction, thereby preventing judicial intervention in disputes involving taxes Defendant has yet to collect. Enochs v. Williams Packing & Navigation Co., 370 U.S. 1, 5-7 (1962). Here, the underlying dispute concerns Springer's liability for assessed but uncollected income taxes. Springer now disputes the amount of his income tax liability, the method by which Defendant assessed the amount owed, and the manner in which the IRS conducted its investigation. (See Pl.'s Compl. ¶¶

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factual attack on the Court's subject matter jurisdiction.

59-99.) Springer's requested relief would require the IRS to conduct a new CDP hearing and reassess his income tax liability—relief which would restrain the assessment or collection of federal taxes in direct contravention of the AIA. Therefore, the AIA bars Springer's action unless it falls within either a statutory or judicially created exception to the AIA. James v. United States, 970 F.2d 750, 756 (10th Cir. 1992).

A. Statutory Exception to the AIA.

Springer first argues that a statutory exception to the AIA—§ 6630(e)(1)—allows the Court to retain subject matter jurisdiction over his action for injunctive relief.[3]

> **In general.–** . . . if a hearing is requested under . . . [§ 6630](a)(3)(B), the levy actions which are the subject of the requested

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[3]The AIA contains other exceptions, but Springer only argues that § 6330(e)(1) is applicable.

> hearing . . . shall be suspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of . . . [26 U.S.C. §] 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court.

§ 6630(e)(1). Springer requested, and received, a CDP hearing; therefore, under the plain language of the statute, all levy-related actions are suspended during the statutorily mandated period. Nevertheless, Springer's argument fails for two reasons. First, the record is devoid of either allegations or actual evidence that Defendant has begun or is engaging in levy-related activities during the suspension period. The record actually demonstrates the opposite—Defendant states that it has not, and will not, engage in levy-

related actions during the suspension period. (Def.'s Aff., Dkt. No. 28, at 2 ¶ 7; Def.'s Aff., Dkt. No. 29, at 2 ¶¶ 7, 8.)

Second, § 6330(e)(1) limits the power to enjoin to "the proper court" which, in this instance, is the Tax Court, as provided in § 6330(d):[4]

> **Proceeding after hearing.–(1) Judicial review of determination.**–The person may, within 30 days of a determination under this section, appeal such determination–(A) to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter); or (B) if the Tax Court does not have jurisdiction of the underlying tax liability, to a district court of the United States.§ 6330(d).

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[4]In actions involving statutory construction, the Court first looks to the language of the statute itself. True Oil Co. v. Commissioner, 170 F.3d 1294, 1299 (10th Cir. 1999). In so doing, the Court construes specific provisions of the statute within the context of the entire statute. TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001).

Here, the underlying tax dispute involves income taxes—a type of tax liability over which the Tax Court has jurisdiction. Serv. Employees Int'l Union v. Comm'r, 125 T.C. No. 5, 2005 WL 2234503 (U.S. Tax Ct. Sept. 15, 2005) ("For purposes of section 6330(d), the [Tax] Court may have jurisdiction over an underlying liability for income, estate, or gift tax even when no deficiency has been determined."); Downing v. Comm'r, 118 T.C. 22, 25-28 (2002) ("The Tax Court generally has jurisdiction over income, gift, and estate tax cases for purposes of section 6330(d)(1)(A) because we have deficiency jurisdiction relating to those taxes.").[5] Therefore, the Tax Court is the proper court and has exclusive jurisdiction over the

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[5]See also 26 U.S.C. §§ 7441-42 (creating the Tax Court and conferring jurisdiction; id.§§ 1, 61, 63 (imposing income tax liability, and defining gross income and taxable income); id. §§ 6211-14 (defining Tax Court jurisdiction over income tax deficiencies); 26 C.F.R. § 301.6330-1,A-F3

claims Springer asserts in this case.[6] For the reasons stated above, the Court finds that the § 6630(e)(1) statutory exception to the AIA is inapplicable to the instant action.

B. Judicially Created Exception to the AIA.

Springer next argues that a judicially created exception to the AIA—Enochs v.Williams Packing & Navigation Co., 370 U.S. 1 (1962)—allows the Court to retain subject matter

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[6]The Tax Court also maintains jurisdiction over procedural due process claims Springer may raise. See Alexander v. Ams. United, Inc., 416 U.S. 752, 759 (1974) ("[D]ecisions of [the Supreme] Court make it unmistakably clear that the constitutional nature of a taxpayer's claim . . .is of no consequence under the Anti-Injunction Act."). Voelker v. Nolen, 365 F.3d 580, 580-82 (7th Cir. 2004); Marino v. Brown, 357 F.3d 143, 145-46 ns.4, 5 (1st Cir. 2004); Martin v. Comm'r, 756 F.2d 38, 40 (6th Cir. 1985).

jurisdiction over his action for injunctive relief.[7] The Enochs exception requires Springer to demonstrate that under no set of circumstances could Defendant prevail on its tax claim, and that equity jurisdiction otherwise exists, that is, irreparable harm and no adequate legal remedy. Enochs, 370 U.S. at 7. Here, Springer's argument fails for two reasons. First, Springer neither develops nor advances a reasoned Enochs argument with supporting citations to the record; he merely cites Enochs and draws a legal conclusion. Although Springer proceeds *prose*, the Court will neither construct arguments nor sift the record for him in an attempt to undergird his conclusory assertion that his action falls within the Enochs exception. Mitchell v. City of Moore, 218 F.3d 1190, 1199 (10th Cir. 2000); Drake v. City of

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[7]South Carolina v. Regan, 465 U.S. 367 (1984) recognizes another judicially created exception to the AIA; however, Springer does not argue that his action falls under the Regan exception.

Fort Collins, 927 F.2d 1156, 1159 (10th Cir. 1991). Second, at the current stage of litigation, equity jurisdiction does not exist as Springer has an adequate legal remedy available—he may pay the tax and sue for refund. 26 U.S.C. § 7422; Enochs, 379 U.S. at 7 ("The manifest purpose of s 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund."); Flora v. United States, 362 U.S. 145, 177 (1960) (holding that 28 U.S.C. § 1346(a) requires full payment of the alleged wrongful assessment prior to maintaining an income tax refund suit in federal district court). For the reasons stated above, the Court finds that the judicially created Enochs exception to the AIA is also inapplicable to the instant action.

CONCLUSION

In light of Springer's failure to demonstrate

that his suit falls within an exception to the AIA, his suit for injunctive relief is barred. Therefore, Defendant's Motion to Dismiss [Dkt. No. 13] is **GRANTED** as the Court lacks subject matter jurisdiction. Because the Court lacks power to rule on any substantive motions, Springer's Motion for Temporary and Preliminary Restraining Order [Dkt. No. 23] and Motion for Court Order to Quash Notice of Determination [Dkt. No. 24] are **STRICKEN AS MOOT.**

IT IS SO ORDERED this 6th day of October, 2005.

/s/Stephen P. Friot
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

LINDSEY K. SPRINGER,

Plaintiff,

v. Case No. CIV-05-1075-F

UNITED STATES OF AMERICA,
et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Now before the Court is a Motion to Dismiss filed by Defendant, the United States of America (Defendant), as the real party in interest and in place of the named federal Defendants Fred Rice, Scott Penny, and Leland Neubauer. Plaintiff Lindsey K. Springer (Springer) filed a response; accordingly, the motion is ripe for disposition. The Court, upon full consideration of the applicable law, now **GRANTS** Defendant's Motion to Dismiss.

BACKGROUND

In February 1997, the United States Tax Court (Tax Court) found Springer liable for his failure to file federal income tax returns and pay estimated taxes for the years 1990 through 1995. The Tenth Circuit Court of Appeals subsequently dismissed Springer's appeal.

In April 2005, Springer requested a Collection Due Process Hearing (CDP hearing) as a result of the Internal Revenue Service's (IRS) "Final Notice" detailing its intent to levy Springer's assets and collect on his federal income tax liabilities. The IRS conducted the telephone CDP hearing and, on August 16, 2005, issued two final notices of determination (NODs) outlining the matters considered at the CDP hearing and sustaining the decision to levy.

Also in April 2005, Springer filed suit in federal court seeking injunctive relief. The Court dismissed the suit for lack of subject matter jurisdiction as the Tax Court maintained exclusive jurisdiction over Springer's underlying income tax

dispute. Shortly before the Court's dismissal, Springer filed the instant action alleging twenty one counts of error in the IRS's handling of the CDP hearing and issuance of the NODs. Defendant now moves the Court to dismiss Springer's amended complaint under FED. R. CIV. P. 12(b)(1) for lack of subject matter jurisdiction and under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

DISCUSSION

The dispositive issue in the instant action concerns the existence, or lack thereof, of the Court's subject matter jurisdiction to address the merits of Springer's suit. In his amended complaint, Springer requests the Court to review the IRS's August 2005 NODs issued as a result of the April 2005 CDP Hearing. In actuality, Springer's amended complaint challenges his tax liabilities underlying the NODs, the method by which Defendant assessed the tax liabilities, and the manner in which Defendant conducted the CDP

Hearing resulting in the issuance of the NODs. (Pl.'s Compl., Dkt. No. 1, at ¶¶ 18-50.) In sum, Springer argues that the Court should quash the NODs and reverse the Tax Court because the underlying CDP hearing and tax assessment were faulty. The Court takes judicial notice of its previous order and concludes that the instant action is barred by res judicata. St. Louis Baptist Temple, Inc. v. Fed. Deposit Ins. Corp., 605 F.2d 1169, 1172 (10th Cir. 1979); Def.'s Br., Dkt. No. 24, at 8, ¶ 18.

"The doctrine of res judicata, or claim preclusion, will prevent a party from relitigating a legal claim that was or could have been the subject of a previously issued final judgment", MACTEC, Inc. v. Gorlick, 427 F.3d 821, 831 (10th Cir. 2005), including jurisdictional issues, Stewart Sec. Corp. v. Guar. Trust Co., 597 F.2d 240, 242 (10th Cir. 1979). Here, the Court previously entered final judgment dismissing an earlier action between the same litigants over the same

general claim—Springer's income tax challenge—for a lack of subject matter jurisdiction. (See Case No. CIV-05-466-F, Dkt. Nos. 33, 34.) Moreover, Springer had a full and fair opportunity to litigate the issue of subject matter jurisdiction. Id. Consequently, res judicata bars the instant action. MACTEC, 427 F.3d at 831 (listing elements of res judicata and its single exception); Stewart Sec. Corp., 597 F.2d at 242-43 (affirming trial court's dismissal of plaintiff's action under res judicata for lack of subject matter jurisdiction). That Springer raises new alleged errors regarding the CDP Hearing, or the NODs issued as a result of the hearing, that were not raised in the previously dismissed action is irrelevant; any new alleged issues would have been subject to the same judgment. Id. In light of the foregoing, Defendant's Motion to Dismiss [Dkt No. 23] is **GRANTED**, and the instant action is **DISMISSED** on the basis that res judicata bars the

action.[8]

IT IS SO ORDERED this 7th day of August, 2006.

/s/Stephen P. Friot
United States District Judge

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[8]The Court also concludes that dismissal of this action is appropriate under Fed. R. Civ. P 12(b)(1) for lack of subject matter jurisdiction for the reasons stated in Defendant'smotion

FILED
United States Court of Appeals
Tenth Circuit
May 1, 2007
Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, ex rel. United States of America, by and through its Officers, and employees FRED RICE; SCOTT PENNEY; LELAND BOWEN,

Defendants-Appellees.

No. 05-6387
(D.C. No. CIV-05-466-F)(W.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS, ex rel. United States of America, by and through its Officers and Employees,

Defendant-Appellee.

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

Defendants-Appellees.

No. 06-5123
(D.C. No. 06-CV-110-CVE-PJC)(N.D. Okla.)

No. 06-6268
(D.C. No. CIV-05-1075-F)
(W.D. Okla.)

[PAGE 1 ENDS]

ORDER AND JUDGMENT[1]

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[1]After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). These cases

Before **HENRY**, **ANDERSON**, and **McCONNELL**, Circuit Judges.

Plaintiff Lindsey Springer, a tax protester, describes himself as the founder of "Bondage Breakers Ministries," organized in 1992, whose sole purpose is "to expose the violations of the written law committed by the Internal Revenue Service [(IRS)]." R., Doc. 1 at 5, ¶ 9.[2] He appeals from three separate judgments, two of which concern his liability for federal income taxes, penalties, and interest for 1990-1995 and the IRS's attempt to collect. His third appeal is a broader challenge to

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are therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1

[2] References to the record are to the record in appeal No. 05-6387 unless otherwise noted

the IRS's general power to collect failure-to-file penalties for 1982-2006. We have combined the appeals for disposition. Because Springer appears pro se, we review his pleadings and other papers liberally and hold them [PAGE 2 ENDS] to a less stringent standard than those drafted by attorneys, but we do not act as his advocate. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 & n.3 (10th Cir. 1991). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district courts' judgments. Because the appeals are frivolous and brought for purposes of delay, we impose monetary sanctions on Springer. We also propose filing restrictions.

I. Background

The heart of these appeals represents Springer's latest push in a long campaign to challenge his liability for federal income taxes, penalties, and interest, and to delay collection. In 1996, the IRS sent Springer two notices of deficiency concerning unpaid income taxes for 1990

through 1995, years in which Springer filed no federal income tax returns. He challenged the notices in the United States Tax Court, arguing, among other things, that a tax on income amounts to involuntary servitude in violation of the Thirteenth Amendment and that the Sixteenth Amendment does not authorize the Commissioner of the IRS to collect taxes. In upholding the notices of deficiency, the Tax Court characterized Springer's arguments as "nothing but tax protester rhetoric and legalistic gibberish" and imposed a $4,000 sanction because the challenge was frivolous and made only for the purpose of delaying collection. *See* R., Doc. 16, Ex. 5 at 2 (copy of *Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997) (unpublished)). We dismissed Springer's appeal of that decision because he had failed to pay a prior $2,000 sanction this court imposed in a separate frivolous appeal. *See* R., [PAGE 3 ENDS] Doc. 16, Ex. 6 (copy of *Springer v. Comm'r*, No. 97-9008 (10th

Cir. Oct. 15, 1997) (unpublished order of dismissal)). The Supreme Court denied his petition for a writ of certiorari. *Springer v. Comm'r*, 524 U.S. 920 (1998).

On March 2, 2005, the IRS sent Springer a notice of intent to levy his assets in order to collect the tax liability adjudicated in the earlier proceeding. *See* R., Doc. 1, Ex. 9. The notice indicated that the amount owed, including penalties and interest, was $300,071.56. *Id.* at 2. Springer requested a pre-levy collection due process (CDP) hearing pursuant to 26 U.S.C. § 6330, arguing, among other things, that he earned no taxable income for 1990-1995, but was living off of gifts and donations; that the IRS improperly had determined the amount of his tax liability; and that a provision of the Paperwork Reduction Act of 1995 (PRA) protected him from any penalties arising from his failure to file tax returns for 1990-1995 because, he claimed, IRS Form 1040 and its variants lacked a valid control

number from the Office of Management and Budget (OMB) for those years. The hearing officer assigned to the matter, defendant Scott Penney, informed Springer that he was entitled only to an unrecorded telephonic hearing because the claims he raised were frivolous, and that he would not be permitted to challenge his tax liability because he already had an opportunity to appeal that determination from the notices of deficiency.

On April 25, 2005, one day before the CDP hearing, Springer filed the action underlying appeal No. 05-6387. He asserted that the claimed tax [PAGE 4 ENDS] deficiencies were erroneous and requested a variety of injunctive relief, including that defendants provide an impartial hearing officer, record the hearing, and obtain verification that the underlying tax liability was computed in accordance with all applicable laws and administrative procedures as required by 26 U.S.C. § 6330(c)(1). He also sought an

injunction directing the defendants to consider his PRA defense and evidence of errors concerning the underlying tax liabilities, in particular that some of the liabilities were improperly derived from Bureau of Labor statistics and that some were based on a bogus Form 1099.

Defendants filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. They argued that sovereign immunity applied; that the Anti-Injunction Act, 26 U.S.C. § 7421(a) (AIA), barred the relief Springer sought; that the Tax Court, not the district court, had exclusive jurisdiction over the CDP matter; that Springer could not use the CDP hearing to challenge the tax liabilities that the Tax Court had upheld; and that he had not exhausted his administrative remedies. Concluding that the AIA barred Springer's action, the district court dismissed the case for lack of subject

matter jurisdiction. *See Springer v. United States*, No. 05-466, 2005 WL 2467775, at *2-4 (W.D. Okla. Oct. 6, 2005) (unpublished) (*Springer I*).

Meanwhile, Penney held the telephonic CDP hearing on April 26, 2005. On August 16, the Office of Appeals issued notices of determination approving the proposed levy. Springer appealed those determinations in a separate suit filed [PAGE 5 ENDS] in federal district court on September 15, 2005, from which appeal No. 06-6268 arises. Defendants moved to dismiss for substantially the same reasons they advanced in their motion to dismiss in *Springer I*. The district court took judicial notice of its dismissal order in *Springer I*, which it characterized as a dismissal based on the Tax Court's exclusive jurisdiction over Springer's underlying income tax dispute, noted that the substance of *Springer I* and the second lawsuit concerned the same general claims, and dismissed the action on the ground that *Springer I* barred it under principles of res

judicata. *See Springer v. United States*, No. 05-1075, 2006 WL 2265521, at *1 (W.D. Okla. Aug. 7, 2006) (unpublished) (*Springer II*). The court also concluded "that dismissal of this action is appropriate . . . for lack of subject matter jurisdiction for the reasons stated in Defendant's motion." *Id.* at *1 n.1.

The third appeal, No. 06-5123, arises from a case Springer filed on February 17, 2006, in which he alleged that he was "the subject of civil actions and criminal investigations in the Northern District and Western District of Oklahoma" involving "the claim or threat of penalty by the [IRS] for failure to supply information upon an information request form labeled Form 1040." No. 06-5123, R., Doc. 1 at 9, ¶ 39. He asserted that IRS Form 1040 and its variants had not complied with the PRA since 1981 because the OMB number was invalid. On that basis, he requested a declaratory judgment concerning whether the IRS could, among other things, pursue any

penalty, civil or criminal, for the [PAGE 6 ENDS] yeas 1982-2006, ostensibly against either him or others. He also sought a prelirminary injunction against the alleged investigations into his failure to supply information on income tax returns. The district court dismissed the case for lack of subject matter jurisdiction under the AIA and because the PRA does not authorize a private right of action but acts as a defense. *See Springer v. United States*, 447 F. Supp. 2d 1235, 1238-39 (N.D. Okla. 2006) (*Springer III*).

II. Discussion

A. *Springer I* and *Springer II*

We have conducted a de novo review of the holding in *Springer I* that the court lacked subject matter jurisdiction under the AIA, *see Ambort v. United States*, 392 F.3d 1138, 1140 (10th Cir. 2004), and affirm on that basis. We affirm *Springer II* on the ground that the Tax Court had exclusive jurisdiction over that case. *See United States v. Sandoval*, 29 F.3d 537, 542 n.6 (10th Cir. 1994)

(explaining that we are free to affirm on any grounds for which there is a
sufficient record to permit conclusions of law).

The AIA provides that, subject to certain statutory exceptions, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). The purpose of the AIA "is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed.[PAGE 7 ENDS] sums be determined in a suit for refund." *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962). Because penalties and interest arising from the failure to pay taxes are assessed as taxes, *see* 26 U.S.C. § 6665(a)(2), the AIA bars actions seeking to enjoin their assessment. *See Nuttelman v. Vossberg*, 753 F.2d 712, 714 (8th Cir. 1985) (per curiam) (holding that penalties and

interest are subject to the AIA); *cf. Souther v. Mihlbachler*, 701 F.2d 131, 132 (10th Cir. 1983) (per curiam) (holding that civil penalties imposed under 26 U.S.C. § 6682 for making false statements in connection with withholding are taxes within the meaning of the AIA).

The statutory exception to the AIA that Springer raised in the district court is 26 U.S.C. § 6330(e)(1).[3] Section 6330(e)(1) permits a party to seek injunctive relief in a proper court when the IRS initiates a levy during the statutory period of suspension that is triggered by the request for a

---

[3] In relevant, part, 26 U.S.C. § 6630(0(e)(1) provides: [I]f a [CDP] hearing is requested under subsection (a)(3)(B), the levy actions which are the subject of the requested hearing . . . shall besuspended for the period during which such hearing, and appeals therein, are pending. In no event shall any such period expire before the 90th day after the day on which there is a final determination in such hearing. Notwithstanding the provisions of section 7421(a), the beginning of a levy or proceeding during the time the suspension under this paragraph is in force may be enjoined by a proceeding in the proper court, including the Tax Court.

CDP hearing. *Hart* v. *United States*, 291 F. Supp. 2d 635, 645 (N.D. Ohio 2003). Contrary to Springer's [PAGE 8 ENDS] argument, the exception is not triggered by the mere issuance of a notice of intent to levy. As the district court correctly determined, Springer had not alleged that the IRS had begun to levy his assets during the pendency of his CDP hearing, and the record indicates that the IRS had in fact suspended collections. Thus, Springer failed to bring himself within this statutory exception.[4]

Springer also relied on a judicially created exception to the AIA that allows an injunction if it is clear that "under no circumstances could the Government ultimately prevail" and if equity jurisdiction otherwise exists, *see Enochs*, 370 U.S. at

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[4]The district court also concluded that to the extent he relied on the § 6330(e)(1) exception, Springer had brought his claims in the wrong court. Because we agree that the IRS had suspended its collection activities and therefore Springer could not invoke the exception, we need not address the district court's alternate conclusion.

7. Springer cannot meet either of these requirements. The government ultimately could prevail in levying Springer's assets because the issue of his income tax liability for 1990-1995 was finally determined in his earlier suit, 26 U.S.C. § 6331(a) authorizes the IRS to impose the levy, and the levy could be sustained if the CDP hearing comported with applicable law. As to the second requirement, an adequate remedy at law will preclude the exercise of equity jurisdiction. *See Wyo. Trucking Ass'n v. Bentsen*, 82 F.3d 930, 935 (10th Cir. 1996). Springer cannot show the absence of an adequate legal remedy. To the contrary, he already has availed himself of an adequate legal remedy [PAGE 9 ENDS] concerning his liability—he litigated in the Tax Court and lost. Additionally, his ability to appeal the result of the CDP hearing under 26 U.S.C. § 6330(d)(1) provides him with an adequate legal remedy concerning the levy procedure.

Springer II was an appeal from the notices

of determination issued at the conclusion of the CDP hearing. Springer, however, brought the appeal in the wrong court. Under the statute as it read at the time he filed *Springer II*, he was required to bring his appeal in the Tax Court, not the district court, because the underlying tax liability concerned income taxes. *See* 26 U.S.C. § 6330(d)(1) (2000) (providing that an appeal of a CDP determination must be brought to the Tax Court if it has jurisdiction of the underlying tax liability);[5] *Voelker v. Nolen*, 365 F.3d 580, 581 (7th Cir. 2004) (per curiam) (Tax Court has jurisdiction over appeals from CDP hearings involving income taxes); *accord Marino v. Brown*, 357 F.3d 143, 146 (1st Cir. 2004) (per curiam). For this reason, the district court lacked subject matter jurisdiction, and we need not address the

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[5]In 2006, Section 6330(d)(1) was revised to direct all appeals from CDP hearings to the Tax Court. *See* Pub. L. No. 109-280, § 855(a), 120 Stat. 780, 1019 (2006). The revision does not affect our review.

preclusive effect of *Springer I* on *Springer II*. Springer's argument that one of the notices of determination directed him to appeal to a United States District Court does not defeat the fact that the district court lacked jurisdiction. Parties cannot confer [PAGE 10 ENDS] subject matter jurisdiction on a federal court by their actions. *Prier v. Steed*, 456 F.3d 1209, 1214 (10th Cir. 2006)[6]

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[6]In view of our jurisdictional disposition, we do not reach the merits [5] of *Springer I* and *Springer II*. But we note that res judicata, which we may raise sua sponte, would bar those actions to the extent Springer challenges the fact of his liability for income taxes, interest, and penalties for 1990-1995. *See Arizona v. California*, 530 U.S. 392, 412 (2000) (holding that sua sponte application of res judicata is appropriate in "special circumstances," including when court is on notice that it has previously decided a matter); *United States v. Sioux Nation of Indians*, 448 U.S. 371, 433 (1980) (Rehnquist, J., dissenting) (explaining that res judicata is a doctrine adopted by the courts to prevent litigants from unduly consuming the time of the courts by seeking to relitigate matters already decided); *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) (setting forth test for application of res judicata). Springer's barred challenge to his tax liability for1990-1995, which has unduly consumed judicial

B. *Springer III*

In *Springer III*, Springer requested declaratory and injunctive relief based on the public protection provision of the PRA, which he claimed precluded the IRS from collecting any penalties arising from his failure to file a federal income tax return for calendar years 1982 through 2006. Exercising de novo review, *see Karr v. Hefner*, 475 F.3d 1192, 1200 (10th Cir. 2007) (question of statutory construction reviewed de novo), we affirm the district court on the ground that the PRA creates a defense, not a private right of action, and therefore we need not reach the alternate basis for the district court's disposition, that the AIA barred the action. [PAGE 11 ENDS]

The PRA's public protection provision is 44 U.S.C. § 3512. It states:

> (a) Notwithstanding any other provision of law, no person shall be subject to any

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resources, lends further support for the filing restrictions we propose below

> penalty for failing to comply with a collection of information that is subject to this subchapter if–
>
> (1) the collection of information does not display a valid control number assigned by the Director [of the OMB] in accordance with this subchapter; or
>
> (2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.
>
> (b) The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

44 U.S.C. § 3512. The question is whether subsection (b) of the statute provides a right of action or only a defense. The Ninth Circuit has stated that it "is apparent from subsection (b)" that the PRA "authorizes its protections to be used

as a defense. [It] does not authorize a private right of action." *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 844 (9th Cir. 1999). We agree. In subsection (b), the meaning of the phrase "defense, bar, or otherwise" is the pivotal consideration. Applying the statutory canon of *ejusdem generis*, we readily conclude that "or otherwise" in § 3512(b) embraces only procedural devices similar to complete defenses or bars; the phrase does not function to expand subsection (b) into a right of action. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001) (explaining that *ejusdem generis* is "the [PAGE 12 ENDS] statutory canon that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words") (quotation and alteration omitted).

Our conclusion is supported by the language that follows "defense, bar, or

otherwise." Although, as Springer points out, that language permits the defense to be raised "at any time," it may only be raised at any time "during the agency administrative process" or in a "judicial action applicable" to that process. 44 U.S.C. § 3512(b). Thus, § 3512 may only be invoked as a defense "at any time during ongoing proceedings." *Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin.*, 244 F.3d 144, 150 (D.C. Cir. 2001) (discussing *Saco River Cellular, Inc. v. F.C.C.*, 133 F.3d 25, 31 (D.C. Cir. 1998)).

Springer did not raise the PRA as a defense or in a judicial action applicable to any agency administrative process. Rather, he raised it as a claim in an independent action, a fact that is underscored by the relief sought under the PRA—an injunction against conduct alleged to have occurred in connection with other pending civil actions and criminal investigations. Because § 3512(b) does not provide a right of action, the district court properly dismissed the case. [PAGE

13 ENDS]

III. Monetary Sanctions and Filing Restrictions

A. Monetary Sanctions

Defendants have filed motions for sanctions in appeal No. 05-6387 (from *Springer I*) and appeal No. 06-5123 (from *Springer III*), each of which requests a flat fee of $8,000 to compensate them for attorney's fees and costs in defending what they argue are frivolous appeals. Springer thus has had notice and an opportunity to respond, as required by *Braley v. Campbell*, 832 F.2d 1504, 1514 (10th Cir. 1987). This court has the power to award just damages and single or double costs if the court "determine[s] that an appeal is frivolous" or brought for purposes of delay. Fed. R. App. P. 38; 28 U.S.C. § 1912. "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." *Braley*, 832 F.2d at 1510 (quotation omitted).

We determine that appeal No. 05-6387 and

appeal No. 06-5123 are frivolous and brought for purposes of delay. When the IRS issued its notices of deficiency in 1996, Springer had two options, to pay the tax and sue for a refund under 26 U.S.C. § 7422 or to petition the Tax Court for a redetermination under 26 U.S.C. § 6213(a). *See Taylor v. Allan*, 204 F.2d 485, 486 n.4 (10th Cir. 1953). He chose the latter option, and the Tax Court ruled against him, a judgment that is now incontestable. When the IRS issued its notice of intent to levy, Springer properly requested a CDP hearing, but he challenged that hearing in a jurisdictionally defective action, *Springer I*, then took a frivolous appeal from the [PAGE 14 ENDS] dismissal of that action. *Springer III* was dismissed as a procedurally improper means of challenging the government's power to impose penalties arising from the failure to file federal income tax returns for 1982-2006, and his appeal from that dismissal also was frivolous. Moreover, many of his arguments take issue with the fact of his

underlying liability for 1990-1995, a fact that is no longer open to challenge. Accordingly, we conclude that the results in appeal No. 05-6387 and appeal No. 06-5123 are obvious, that Springer's arguments are wholly without merit, and that these appeals were brought to delay further the collection of his federal income tax liability for 1990-1995. Defendants' motions, therefore, have a sound basis.[7]

In support of their requests for a flat fee of $8,000 in both *Springer I* and *Springer III*, defendants state that "[a]ccording to the records of the Tax Division of the Department of Justice, the average expense in attorney salaries and other costs incurred by this office in the defense of frivolous taxpayer appeals in which sanctions were awarded during 2004 and 2005 is

---

[7]Like *Springer I*, *Springer II* was a jurisdictionally defective challenge to the CDP hearing, and the appeal from *Springer II* also is frivolous. Because the government has not asked for sanctions in that appeal, we base our award of monetary sanctions on the other two appeals

approximately $11,042." No. 05-6387, Appellees' Mot. for Sanctions at 7; *see also* No. 06-5123, Appellees' Mot. for Sanctions at 5-6 (substantially the same). We granted a similar request for $8,000 in *Kyler v. Everson*, 442 F.3d 1251, 1253-54 (10th Cir. 2006)[PAGE 15 ENDS] . But under the unique circumstances of *Springer I* and *Springer III*, we conclude that just damages are $4,000 for each of the two appeals, for a total of $8,000.[89] *See Stafford v. United States*, 208 F.3d 1177, 1179 (10th Cir. 2000) (granting request for $4,000 sanction in frivolous tax appeal). We expressly note that this award is not meant to establish a presumptive or flat-fee sanction to be used in all frivolous tax

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[8]Although we have remanded cases to the district court to make findings of fact related to an award of just damages, *see, e.g., Beilue v. Int'l Bhd. of Teamsters, Local No. 492*, 13 F. App'x 810, 815 (10th Cir. 2001) (unpublished), Springer has not opposed the amount that defendants request, and remand therefore is unnecessary. (We cite *Beilue* for informational purposes only, not as precedent. *See* 10th Cir. R. 32.1(A).)

appeals.

B. Filing Restrictions

Federal courts have the inherent power under 28 U.S.C. § 1651(a) to regulate the activities of abusive litigants by imposing carefully tailored restrictions under appropriate circumstances. *See Winslow v. Hunter (In re Winslow)*, 17 F.3d 314, 315 (10th Cir. 1994) (per curiam); *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989) (per curiam). Injunctions restricting further filings are appropriate where (1) the litigant's lengthy and abusive history is set forth; (2) the court provides guidelines as to what the litigant may do to obtain its permission to file an action; and (3) the litigant receives notice and an opportunity to oppose the court's order before it is implemented. *See Tripati*, 878 F.2d at 353-54. [PAGE 16 ENDS]

As discussed above, these combined appeals are frivolous. Additionally, Springer has a long history of filing meritless federal actions and

appeals pro se. We found his first tax appeal frivolous and imposed a $2,000 sanction. *See Springer v. IRS*, Nos. 95-5072 & 95-5142, 1996 WL 164459 (10th Cir. Apr. 8, 1996) (unpublished). We dismissed four other tax-related appeals because Springer had not paid that sanction. *See Springer v. United States*, No. 98-5056 (10th Cir. June 15, 1998) (unpublished order of dismissal); *Springer v. United States*, No. 97-5095 (10th Cir. Oct. 16, 1997) (unpublished order of dismissal); *Springer v. United States*, No. 97-5093 (10th Cir. Oct. 16, 1997) (unpublished order of dismissal); *Springer v. Comm'r*, No. 97-9008 (10th Cir. Oct. 15, 1997) (unpublished order of dismissal). In yet another tax case where Springer was a plaintiff but not an appellant, we noted the district court had properly granted summary judgment against the plaintiffs on their claim that federal taxation amounted to involuntary servitude and imposed monetary sanctions for the frivolous appeal. *See Buckner v. United States*, No. 98-5057, 1999 WL

61071, at *1 (10th Cir. Feb. 4, 1999) (unpublished). And as noted above, the Tax Court imposed a $4,000 sanction for Springer's frivolous appeal from the notices of deficiency concerning his 1990-1995 income tax liability.

Springer has not found any more litigation success outside of the tax arena. In *Springer v. Alabama*, we imposed a $1,000 sanction on Springer for filing a frivolous appeal of the district court's dismissal, on sovereign immunity grounds, [PAGE 17 ENDS] o f his claim that the respective ballot laws of all fifty states violated his constitutional right to run for president. *See* No. 99-5227, 2000 WL 305492, at *1 (10th Cir. Mar. 24, 2000) (unpublished). He also brought a similar su t against the election officials of all fifty states. In that case, we affirmed the district court's dismissal because Springer had failed to identify a legal theory entitling him to relief, *see Springer v. Balough*, No. 00-5071, 2000 WL 1616246, at *2 (10th Cir. Oct. 30, 2000) (unpublished), and we

later affirmed the district court's assessment of costs against him, *see Springer v. Rancourt*, 17 F. App'x 824, 826 (10th Cir. 2001). We summarily affirmed the district courts' dismissal of Springer's libel and slander claims in *Springer v. The Infinity Group Co.*, No. 98-5182, 1999 WL 651391, at*2 (10th Cir. Aug. 26, 1999). And we affirmed the dismissal of another case in which Springer asserted that the defendants had breached a contract to pay a $1,000,000 reward for information leading to the arrest and conviction of anyone involved in the assassination of President John F. Kennedy on the ground that Springer had sued the wrong defendant. *See Springer v. Hustler Magazine*, No. 99-5117, 1999 WL 979242, at *2 (10th Cir. Oct. 28, 1999) (unpublished).

In view of his abusive pattern of filing frivolous or malicious actions and appeals pro se, we must restrict Springer's access to the courts. "The right of access to the courts is neither

absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous [PAGE 18 ENDS] or malicious." *Winslow*, 17 F.3d at 315 (quotation and alteration omitted). "[W]here, as here, a party has engaged in a pattern of litigation activity which is manifestly abusive, restrictions are appropriate." *Id.* (quotation omitted).

Our filing restrictions must be narrowly tailored. *See Tripat* , 878 F.2dat 352. But as our review indicates, Springer has not limited the scope of his baseless attacks to the tax arena or a particular set of defendants. Thus, Springer's litigation history does not present circumstances similar to those we recently considered in *Sieverding v. Colorado Bar Association*, 469 F.3d 1340, 1345 (10th Cir. 2006), where we modified a district court's filing restrictions by limiting them to filings against only those persons and entities against whom the plaintiff had a history of

proceeding, without regard to subject matter. Therefore, subject to Springer's opportunity to object, as described below, we propose the following reasonable filing restrictions on future filings by Springer "commensurate with our inherent power to enter orders 'necessary or appropriate' in aid of our jurisdiction." *Winslow*, 17 F.3d at 315 (quoting 28 U.S.C.§ 1651(a)).

Springer is ENJOINED from proceeding in this court as a petitioner in an original proceeding or as an appellant in a civil matter (except in these combined appeals) unless he is represented by a licensed attorney admitted to practice in this court or unless he first obtains permission to proceed pro se. To obtain permission to proceed pro se, Springer must take the following steps: [PAGE 19 ENDS]

1. File a petition with the clerk of this court requesting leave to file an original proceeding or to proceed pro se on appeal. If Springer seeks to proceed pro se on appeal, he must file the

petition with the clerk of this court not more than ten days after filing his notice of appeal in the district court;

2. Include in the petition the following information:

A. A list of all lawsuits currently pending or filed previously with this court, including the name, number, and citation, if applicable, of each case, and the current status or disposition of the appeal or original proceeding; and

B. A list apprising this court of all outstanding injunctions or orders limiting Springer's access to federal court, including orders and injunctions requiring him to seek leave to file matters pro se or requiring him to be represented by an attorney, including the name, number, and citation, if applicable, of all such orders or injunctions; and

3. File with the clerk of this court a notarized affidavit, in proper legal form, which recites the

issues Springer seeks to present, including a short discussion of the legal basis asserted therefor, and describing with particularity the order being challenged. The affidavit also must certify, to the best of Springer's knowledge, that the legal arguments being raised are not frivolous or made in bad faith, that they are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, that the appeal or other matter is not interposed for any improper purpose such as delay [PAGE 20 ENDS] or to needlessly increase the cost of litigation, and that he will comply with all appellate and local rules of this court. The affidavit must be filed with the petition and is therefore subject to the same ten-day filing deadline as the petition in the case of a pro se appeal.

These documents shall be submitted to the clerk of this court. The matter will be dismissed for failure to prosecute if the required documents are not submitted, are submitted in an improper form,

or are untimely submitted. If the matter is not dismissed for failure to prosecute, the clerk shall forward the documents to the Chief Judge or the Chief Judge's designee for review to determine whether to permit Springer to file an original proceeding or to pursue an appeal. This review will take into account the preclusive effect of the Tax Court's determination in *Springer v. Comm'r*, No. 26045-96 (T.C. Feb. 10, 1997) (unpublished), as to the fact of Springer's liability for federal income taxes, penalties, and interest for 1990-1995 and the government's right to collect that liability, matters that are not subject to further litigation. Without the approval of the Chief Judge or the Chief Judge's designee, the matter will be dismissed. If the Chief Judge or the Chief Judge's designee approves the petition, an order shall be entered indicating that the matter shall proceed in accordance with the Federal Rules of Appellate Procedure and the Tenth Circuit Rules.

Springer shall have ten days from the date

of this order and judgment to file written objections to these proposed filing restrictions. *See Winslow*, 17 F.3d at 316. [PAGE 21 ENDS] The response shall be limited to fifteen pages. *See id.* If Springer does not timely file objections, the filing restrictions shall take effect twenty days from the date of this order and judgment, and the filing restrictions shall apply to any matter filed after that time, except for further filings in these combined appeals. *Id.* at 316-17. If Springer does file timely objections, the filing restrictions shall not take effect until after this court has ruled on those objections.

IV. Conclusion

The judgments of the district courts are AFFIRMED. Appellees' motion for sanctions in appeal No. 05-6387 is GRANTED IN PART in the amount of $4,000. Appellee's motion for sanctions in appeal No. 06-5123 is GRANTED IN PART in the amount of $4,000. It is ORDERED that, within thirty days of the date this order and judgment is filed, Sprnger shall

make arrangements with appellees' counsel for payment of the sanctions. It is FURTHER ORDERED that Springer shall pay the sanctions in accordance with those arrangements. Springer's motion to file a thirty-two page reply brief in appeal No. 05-6387 is GRANTED. Springer's other pending motions are DENIED.

Entered for the Court

Stephen H. Anderson
Circuit Judge
[PAGE 22 ENDS]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, ex rel. United States of America, by and through its Officers , and employeesFRED RICE; SCOTT PENNEY; LELAND BOWEN,

Defendants-Appellees.

No. 05-6387
(D.C. No. CIV-05-466-F) (W.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS, ex rel. United States of America, by and through its Officers and Employees,

Defendants-Appellees.

No. 06-5123
(D.C. No. 06-CV-110-CVE-PJC)(N.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

Defendants-Appellees

No. 06-6268
(D.C. No. CIV-05-1075-F)
(W.D. Okla.)

ORDER

Filed May 23, 2007

Before HENRY, ANDERSON and McCONNELL, Circuit Judges.

In an Order and Judgment filed in these combined appeals on May 1, 2007, we proposed imposing appellate filing restrictions on plaintiff-appellant Lindsey Springer and permitted Springer to file objections to them, which he has done in a timely manner. We have reviewed

those objections and conclude that Springer has failed to demonstrate good cause why the proposed filing restrictions should not be imposed. It is therefore ORDERED that the filing restrictions contained in this Court's Order and Judgment of May 1, 2007, shall take effect as of the date of the entry of this order.

Also, before the Court is Springer's Motion to Stay Mandate of Order Dated May 1, 2007, or its equivalent," filed May 18, 2007. The Motion is denied as unnecessary. If Springer timely files a petition for rehearing or rehearing en banc, the mandate automatically will be stayed unless the court orders otherwise. See Fed.R.App. 41(d)(1).

Entered for the Court.
Elisabeth A. Shumaker, Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE, ex rel. United States of America, by and through its Officers , and employees FRED RICE; SCOTT PENNEY; LELAND BOWEN,

Defendants-Appellees.

No. 05-6387
(D.C. No. CIV-05-466-F)(W.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS, ex rel. United States of America, by and through its Officers and, Employees

Defendants-Appellees.

No. 06-5123
(D.C. No. 06-CV-110-CVE-PJC)(N.D. Okla.)

LINDSEY K. SPRINGER,

Plaintiff-Appellant,

v.

IRS byand through the United States of America; FRED RICE; SCOTT PENNEY; LELAND NEUBAUER,

No. 06-6268
(D.C. No. CIV-05-1075-F)
(W.D. Okla.)

Defendants-Appellees

ORDER

Filed July 3, 2007

Before HENRY, ANDERSON and McCONNELL, Circuit Judges.

Appellant's petition for rehearing is denied

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled,

that petition is also denied.

Entered for the Court.

Elisabeth A. Shumaker, Clerk

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No. 07-738

In the

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE U.S.

Lindsey K. Springer

Petitioner,

v.

Internal Revenue Service, ex rel. U.S. of America

Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Tenth Circuit

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PETITION FOR REHEARING

Lindsey K. Springer, *pro-se*
5147 S. Harvard, # 116
Tulsa, Oklahoma 74135
918-748-5539

TABLE OF CONTENTS

INTRODUCTION 1

1. The U.S. is subjecting members of the public to penalties for failure to provide answers to questions made by Form such as the 1040, failing to inform members of the public with their questions, the reasons the questions are being asked, the way the answers given are intended to be used, and this Court should rehear this matter and settle the division of the Circuits caused by the U.S. non unified position in favor of this Court's long standing position that tax forms are subject to the same public protections Congress directs all requests to be subjected to in the same way questions would be treated if they were being asked orally by the Agency. 3

2. Rehearing by this Court should be granted because until this Court fixes the division of the Circuits caused by this Court's Dole decision, the public will continue to lose their right to vote, hold property, petition for redress, and freely speak, all penalties to which the Paperwork Reduction Act was enacted to prohibit. 13

CONCLUSION 19

CERTIFICATE OF PETITIONER 20

TABLE OF AUTHORITIES -continued

CIR v. Lane Wells Co. 321, U.S. 219, 223 (1944) 4

Colorado v. Spring, 479 U.S. 564 (1987) . . . 11,12

Dole v. U. Steelworkers, 494 U.S. 26,33 (1990) 1-14

Garner v. U.S., 424 U.S. 648 (1976) 17

Kastigar v. U.S. 406 U.S. 441 (1972) 18

Pennsylvania v. Muniz, 496 U.S. 582, 596 (1990) 14

Pond v. CIR, 2005-255 WL 18928(1-4-07)(10th) 1,13

Salberg v. U.S., 969 F.2d 379, 384(7th. 1992) 3,9,14

Ullmann v. U.S., 350 U.S. 422, 428 (1956) 14

U.S. v. Chisum, 06-7082 at 12 (slip)(10th.2007) 7-12

U.S. v. Collins, 920 F.2d 619 (10th Cir. 1990) 9,12

U.S. v. Dawes, 951 F.2d 1189(10th Cir. 1991) . . 16

U.S. v. Kordel, 397 U.S. 1, 7-10 (1970) 18

U.S. v. Hicks, 947 F. 2d 1356, 1359-60(9th 1991) 3

U.S. v. Hubbell, 530 U.S. 27, 35 (2000) 4

U.S. v. Patridge, 06-3635(11-14-07)(7th.) 3,6,7,12,14

U.S. v. Priest, et al., 06-10438 (9th.Cir.2007) 3

U.S. v. Tedder, 787 F.2d 540, 542 (10th Cir. 1986) 9

U.S. v. Washington, 431 U.S. 181, 188 (1977) . 15

Wolcott v. CIR, T.C. Memo. 2007-315. (fn.8) 12,19

INTRODUCTION

Petitioner asks this Court to reconsider the holding in *Dole v. United Steelworkers*, 494 U.S. 26,33 (1990) that typical information collection requests are tax forms such as the 1040 and reaffirm this holding applies to the Paperwork Reduction Act of 1995 as it did the Act of 1980. Since holding tax forms are subject to the public protection, 44 U.S.C. § 3512(1980), a division of the U.S. Circuit Courts and Tax Court has appeared, both directly after the Dole decision, and now this division has grown to such proportions that the Department of Justice is promoting the divided authority as a green light to continue to disregard Congress and its mandate that all persons are to be told, before they have to answer any questions, orally or in writing, advanced by any Agency, including the Internal Revenue Service, why the Agency is requesting the information sought on their form, how the answers to those questions are intended

to be used, whether the target's response is voluntary or mandatory, and the fact no person is required to answer any question unless the form of questions displays compliance with the Paperwork Reduction Act of 1995(during Dole, 1980).

Even if this Court is unwilling to consider the affect the Paperwork Reduction Act of 1995 has on its 1990 Dole decision, which Congress said was intended to overturn the Dole decision in regard to third party requests not being covered by the 1980 Act's public protection, the fundamental principal that no person should be required to provide answers to questions until that person fully understands the conditions which attach to the usage of those answers must be addressed because there is no way a person can know whether to claim the protection of the Fifth Amendment until such time as the Agency seeking the information has fully disclosed its intentions for the information it seeks.

1. The U.S., in subjecting members of the public to penalties for failure to provide answers to questions made by Form such as the 1040, fail to inform members of the public with their questions, the reasons the questions are being asked, the way the answers given are intended to be used, and this Court should rehear this matter and settle the division of the Circuits caused by the U.S. non unified position in favor of this Court's long standing position that tax forms are subject to the same public protections Congress directs all requests to be subjected to in the same way questions would be treated if they were being asked orally by the Agency.

On November 14, 2007, the 7th Circuit Court of Appeals issued its decision in U.S. v. Denny R. Patridge, case number 06-3635. In its consolidated decision, the 7th Circuit stated it was reaffirming its decision in *Salberg* v. *U.S.*, 969 F.2d 379, 384 (1991), which held the "obligation to file a tax return stems from 26 U.S.C. § 7203, not from any agency's demand. The Paperwork Reduction Act does not repeal § 7203."

The 9th Circuit in U.S. v. Priest, et al., 06-10438, decided July 5, 2007, likewise concluded that the 1995 PRA "does not limit the impact of Hicks (947 F. 2d 1356, 1359-60) because we there held that 'repeals by implication are not favored.'"

The 7th and 9th Circuit's decision are contrary to this Court's holding in *CIR v. Lane Wells Co.* 321, U.S. 219, 223 (1944) that "Congress has given discretion to the Commissioner to prescribe by regulations forms of returns and made it the duty of the taxpayer to comply."

The 7th and 9th Circuit opinions also are contrary to this Court's decision in *Dole v. United Steelworkers*, 494 U.S. 26, 33 (1990) which held "typical information collection requests include tax forms" and that the public is to be protected.

The 7th and 9th Circuit's opinion is also contrary to this Court's decision in *U.S. v. Hubbell*, 530 U.S. 27, 35 (2000) which held "incriminating evidence may be the by-product of obedience to a regulatory requirement."

The decision by the 7th and 9th Circuits completely rejected the direct words of the Paperwork Reduction Act of 1980 and 1995 which both begin at section 3512 "Not withstanding any other provision of law no person shall be subject to any penalty..." The 7th Circuit admits the term "return" is not defined by any Act of Congress and ignores the logical follow that is the request derives from regulations.

The 7th Circuit takes the leap by saying they have "no doubt that the IRS has complied with the Paperwork Reduction Act." "The control number on Form 1040 appears on OMB's web site as a current, valid number; if this is wrong, it takes more than a lawyer's say-so to establish the proposition."

The 7th Circuit's position is contrary to the direct language of the Paperwork Reduction Act of 1995 as well as this Court's decision in Dole. The 1995 Act directs a "complete defense, bar, or otherwise" may be raised at any time. The

protection would begin upon either a person's "say-so" or upon an Attorney claiming the protection for his client. Look at how the 7th Circuit handled the issue.

It threatened disbarment of the Patridge Attorney for raising the protection. There is no doubt the Form 1040 fails to contain any of the listed criteria promulgated by Congress at 44 U.S.C. § 3506(c)(1)(B)(1995) which among other things directs the Agency to inform the target the reason why the questions are being asked and how the information is to be used. Issues the Patridge Panel completely ignored.

See also 5 U.S.C. §552(a) where Congress requires the same list of disclosure for the IRS as section 3506(c)(1)(B) of Title 44.

This Court said in Dole:

> "While the grammar of this text can be faulted, its meaning is clear: **the public is protected under the Paperwork Reduction Act** from paperwork regulations not issued in

compliance with the Act, only when those regulations dictate that a person maintain information for an agency or provide information to an agency. **By its very terms, the statute's enforcement mechanism** does not apply to rules which require disclosure to a third party rather than to a federal agency." Id. at 40

Furthermore, the Patridge panel said "How any of this could block a conviction for tax evasion is a mystery."

The 10th Circuit has steadfastly remained[1] a strong proponent of the Dole holding with their most recent deposit on the reach of protection for the public in *USA v. Chisum*, 06-7082 at 12 (slip op.)(decided 9-26-07)(10th Cir.)

In 2007, the Chisum Panel held:

C. The Paperwork Reduction Act (PRA)

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[1]Petitioner understands thus far the Tenth Circuit has actually given no relief under the 1980 or 1995 Act while they continue to direct where and when such relief is to be given.

The PRA, 44 U.S.C. § 3501-20, precludes the imposition of any penalty against a person for "failing to comply with a collection of information" if either (1) it "does not display a valid control number" or (2) the agency fails to alert the person that he or she "is not required to respond to the collection of information unless it displays a valid control number." 44 U.S.C. § 3512(a). A § 3512(a) defense may be raised at any time. See id. § 3512(b). Tax forms are covered by the PRA. See Dole v. United Steelworkers of Am., 494 U.S. 26, 33 (1990).

Mr. Chisum contends that "[s]ince there was no proof that Form 1040 was a lawful form under the [PRA], the trial court erred in failing to grant [his] request [at the sentencing hearing] to dismiss the indictment." Aplt. Br. at 29. But the PRA protects a person only "for failing to file information. It does not protect one who files information which is false." Collins, 920 F.2d at 630 n.13 (internal quotation marks omitted). The charges against Mr. Chisum were predicated on the filing of false

information, not the failure to file. He is therefore not entitled to relief.

In *U.S. v. Collins*, 920 F.2d 619 (10th Cir. 1990) the 10th Circuit, prior to the 7th Circuit's decision in Salberg, stated

> [fn12]In *U.S. v. Tedder*, 787 F.2d 540, 542 (10th Cir. 1986), this court held that tax forms were not information collection requests subject to the Paperwork Reduction Act because the filing of income tax returns was obligatory. **This holding[2] is superseded by the Supreme Court's analysis in Dole v. United Steelworkers,** ___ U.S. ___, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), which included federal income tax forms within the category of information collection requests under the Act. Dole would also appear to call into question the holdings in Snyder v. IRS, 596 F. Supp. 240 (N.D.Ind. 1984) and Cameron v. IRS, 593 F. Supp. 1540 (N.D.Ind. 1984), aff'd 773 F.2d 126 (7th Cir. 1985), both of which held the Paperwork

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[2]No doubt Dole is a "Holding."

Reduction Act inapplicable to IRS forms. However, Dole does not contravene our recent holding in Lonsdale v. U.S., 919 F.2d 1440, 1444 (10th Cir. 1990) that IRS summonses do not constitute information requests under the Act because they are issued in the course of an investigation directed against a specific individual or entity. See 44 U.S.C. § 3518(c)(1)(B)(ii).

[fn13] In U.S. v. Weiss, 914 F.2d 1514, 1520-22 (2d Cir. 1990), the Second Circuit held that the Paperwork Reduction Act did not preclude prosecution for filing false medicare and Medicaid claims, despite the fact that the forms in question did not contain OMB control numbers. Distinguishing Smith, where defendants were prosecuted for failure to file a Plan of Operations with the Forest Service, the Second Circuit reasoned that the Act "'only protects a person from penalties for failing to files information It does not protect one who files information which is false.'" Id. at 1522 (quoting Funk, The Paperwork Reduction Act: Paperwork Reduction Meets Administrative Law,

24 Harv.J. on Legis. 1, 77 n. 411 (1987)) (emphasis in original). We recognize that because defendant was charged with tax evasion and not failure to file tax returns, he technically was not being prosecuted for failure to provide information. Had defendant's tax evasion been effectuated through the filing of falsified tax returns, Weiss would dictate that no Paperwork Reduction Defense would be available to him. **But because the provision of information in 1040 forms is inexorably linked to the statutory requirement to pay taxes, and defendant failed to file such forms, the Paperwork Reduction Act was applicable to such conduct.** Emphasis added.

Petitioner claims the Chisum Panel[3] is partly incorrect. The Chisum Panel nine months earlier held in *Pond v. CIR*, T.C. Memo 2005-255 WL 18928, decided January 4, 2007, Tax Court was wrong for directing Pond, by raising a defense against penalty and interest claims of the

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[3]Same 10th Circuit but different Judges.

Secretary, he was acting in a frivolous manner.

The 7th Circuit in Patridge says it cannot understand how "tax evasion" and the public protection provision of the Paperwork Reduction Act are connected, describing this as a "mystery" while the 10th Circuit says Forms like the 1040 are "inexorably linked to the statutory requirement to pay taxes..." Collins, fn13, Chisum, pg. 12

The 1980 Act at issue in Collins and Dole protected the public from penalties for failing to maintain or provide information while the 1995 Act protects the public from failing to comply with a collection of information. The 1995 Act also says the OMB number must be issued in "accordance with this chapter" and defense, bar or otherwise, can be raised at any time.

Simply, the decisions show why this Court needs to address the reach of the public protection provided by Congress to the entire Country at 44 U.S.C. § 3512(a)(1995).

Then there is the Tax Court's refusal to

accept the 10th Circuit's decision in Pond v. CIR. See *Wolcott v. CIR*, T.C. Memo. 2007-315. (fn.8)

The relationship between Government and the Public involving gathering information and usage of same is in need of specific uniform enforcement, and to which blatant error of Constitutional proportion exists in the refusal of the U.S. Department of Justice, Commissioner of I.R.S., U.S. Tax Court and the several U.S. Court of Appeals, in rejecting both the law, history and decisions governing the Paperwork Work Reduction Act of both 1980,1995, and the reasons both acts arose in the first place. With many violations comes many cases which can be prevented by granting this Petition for rehearing.

2. Rehearing by this Court should be granted because until this Court fixes the division of the Circuits caused by this Court's Dole decision, the public will continue to lose their right to vote, hold property, petition for redress, and freely speak, all penalties to which the Paperwork Reduction Act was enacted to prohibit from being confiscated from any member of the public.

The 7th Circuit says the requirement to answer questions on Form 1040 comes from 26 U.S.C. § 7203 in both Patridge and Salberg. Section 7203 is a criminal provision. This makes the 7th Circuit's theory that the IRS, by asking the public to answer their questions on the 1040, not only is the IRS conducting an investigation with the 1040, but a criminal investigation at that.

In *Pennsylvania v. Muniz*, 496 U.S. 582, 596 (1990) this Court explored short of the "outer boundaries of what is 'testimonial'" and that the protection primarily was to prevent "a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality..." *Ullmann v. U.S.*, 350 U.S. 422, 428 (1956) This Court went on to say "it is evident that a suspect is 'compelled . . . to be a witness against himself' at least whenever he must face the modern-day analog of the historic trilemma[4] - either during a criminal trial where a

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[4]cruel trilemma means self-accusation, perjury or contempt, defining the operation of the

sworn witness faces the identical three choices, or during custodial interrogation where, as we explained in Miranda, the choices are analogous and hence raise similar concerns." Id.

In *Colorado v. Spring*, 479 U.S. 564 (1987) this Court compared the "right to refuse to answer any question which might incriminate," citing *U.S. v. Washington*, 431 U.S. 181, 188 (1977) and directed it was "self-evident that one who is told he is free to refuse to answer questions is in a curious posture to later complain that his answers were compelled." Ibid.

There, It was said a "valid waiver does not require that an individual be informed of all information 'useful' in making his decision or all information that 'might . . . affec[t] his decision to confess.' *Moran v. Burbine*, 475 U.S., at 422. This

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Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury.

Court has "never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights." Colorado at 577 In regard to an Agency request for information, Congress has made this requirement through the Paperwork Reduction Act of both 1980 and 1995 very clear.

If a Federal Agency refuses to tell a person why they are asking questions of any citizen or group of citizens and how that agency intends to use those answers, the only choice remaining for members of the pubic is the act of remaining silent without threat or being "subject" to any penalty.

In the words of Judge Anderson in 1991, the author of the decision in this case, expressed in the 10th Circuit decision in *U.S. v. Dawes*, 951 F.2d 1189 (fn.2)(10th Cir. 1991)

"In response to a question from the court during oral argument, counsel

> for the government indicated that the government did not have a unified federal position regarding this issue. Given the fact that the issue is one of national scope which affects the tax revenues of the U.S., we find this posture regrettable."

How Petitioner can be subject to sanctions and filing restrictions because the U.S. refused to comply with Congressional mandates is beyond a mystery.

Tax Court refusing to accept a decision by the 10th Circuit in a case which derived from Tax Court should sound the "beyond repair hole in the side of the Titanic" alarm of this Court. Circuit shopping is apparently how Tax Court chooses to evade Congressional mandates at issue in the Paperwork Reduction Act of 1995 has directed by the 10th Circuit in Pond.

In *Garner v. U.S.*, 424 U.S. 648 (1976) this Court started with "the fundamental proposition:

> A witness protected by the privilege

> may rightfully refuse to answer unless and until he is protected at least against the use of his compelled answers and evidence derived therefrom in any subsequent criminal case in which he is a defendant." quoting *Kastigar v. U.S.*, 406 U.S. 441 (1972).

Id. at 656

The Court has held that an individual under compulsion to make disclosures as a witness who revealed information instead of claiming the privilege lost the benefit of the privilege. *U.S. v. Kordel*, 397 U.S. 1, 7-10 (1970).

Given the evidence the U.S. is refusing to recognize or direct compliance with the 1995 Paperwork Reduction Act, continuing to emphasize the Paperwork Reduction Act of 1980 instead, and that a deep divide exists between the 7th Circuit in Patridge and Salberg with the 10th Circuit in Collins, Dawes, Pond and Chisum, as well as the Tax Court's public display of defiance to the 10th Circuits Pond decision it reported in

Wolcott, as well as such blatant defiance by the 7th Circuit and Tax Court for this Court's decision in Dole and Congressional mandates within the Paperwork Reduction Act of 1995, should compel this Court to rehear the matters in this case.

CONCLUSION

For the foregoing reasons Petitioner asks this Court to Grant his Petition for Rehearing.

Respectfully Submitted

2-1-08 /s/ Lindsey K. Springer

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Petition for Rehearing is presented in good faith and not for the purpose of any delay, whatsoever, and is limited to substantial and controlling issues involving recent decisions by both the 7th, 9th and 10th Circuit, which were not available[5] to Petitioner at the time his Petition for Writ of Certiorari was filed with this Court and to which divide this nation on the application and reach of the Paperwork Reduction Act of 1995 only strengthening why this Court should Grand this Petition for Rehearing.

/s/Lindsey K. Springer

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[5]Save the 9th in Priest